Tay Lay Beng v Menteri Hal-Ehwal Dalam Negeri, Malaysia & Anor

HIGH COURT (IPOH) — CRIMINAL APPLICATION NO 44–10 OF 2004
BALIA YUSOF JC
8 DECEMBER 2004

Criminal Procedure — Habeas corpus — Preventive detention — Whether detention was proper — Whether words 'involving violence' comply with s 4 — Emergency (Public Order and Prevention Of Crime) Ordinance s 4(1)

The applicant was issued with an order of detention under s 4(1) of the Emergency (Public Order and Prevention Of Crime) Ordinance 1969 ('the Ordinance') for a period of two years from 24 May 2003. Dissatisfied, the applicant filed an application for a writ of *habeas corpus*. The applicant raised three grounds in support for the application; ie (i) the respondent's affidavit was not true in that para 3 of the said affidavit stated the applicant was arrested on 10 August 2001; (ii) that the words *'berunsur kekerasan'* does not comply with the provisions of s 4(1) of the Ordinance and thus, it was submitted that it is not what is intended or provided for in s 4(1) of the Ordinance. Further, counsel for the applicant submitted that the detention order was in the alternative and the minister had failed to state which of the grounds in s 4(1) he was relying on; and (iii) exh 'ARH 2' was not a report but a mere covering letter to the minister. The non-disclosure of the report was fatal to the case.

Held, dismissing the application:

(1) The mistake as to the date in para 3 of the affidavit was not material and was not prejudicial to the applicant, as the misstatement on the date was at the most, a typographical error and there was ample evidence to prove the applicant was arrested on 26 March 2003 (see paras 6 and 8).

(2) The words *'berunsur kekerasan'* can also mean 'involving violence' as stipulated in that section. Thus, the applicant's objection to the use of the words *'berunsur kekerasan'* instead of just *'kekerasan'* did not vitiate the detention order. The ground stated in the detention order clearly say that the order was made for the purpose of the suppression of violence or the prevention of crimes involving violence as supported in the allegations of facts detailing the applicant's criminal activities involving violence. Therefore, it wass erroneous to suggest that the minister had failed to specify on which limb of s 4(1) the order was made (see para 10).

(3) All the four allegations of facts against the applicant as contained in the detention order bore the hallmark of violence reflecting gangsterism, intimidation and use of weapons. These grounds fall squarely under the second limb of s 4(1) of the Ordinance, which was appropriately invoked

by the minister in this case. Therefore, there wass no defect in the detention order and it was not shown that the minister has invoked the wrong limb of s 4(1) of the Ordinance (see paras 10 and 12).

(4) The confirmation by the minister of the receipt of such a report from the designated officer sealed the doubts that were cast on the exh marked 'ARH 2' and the absence of such a report as contended by the applicant. Thus, upon these facts and circumstances, there was no basis in the applicant's doubts as to the existence of a report referred to in exh 'ARH 2' and the propriety of the detention order (see para 15).

[**Bahasa Malaysia summary**

Satu perintah penahanan dikeluarkan ke atas pemohon di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan tersebut') untuk jangka masa dua tahun dari 24 Mei 2003. Tidak puas hati, pemohon memfailkan permohonan untuk writ *habeas corpus*. Pemohon membangkitkan tiga alasan menyokong permohonan tersebut; iaitu, (i) afidavit responden tidak benar kerana di dalam perenggan 3 afidavit tersebut menyatakan bahawa pemohon ditangkap pada 10 Ogos 2001; (ii) bahawa perkataan 'berunsur kekerasan' tidak mematuhi peruntukan s 4(1) Ordinan tersebut dan oleh yang demikian, ianya dihujahkan bahawa ia tidak seperti yang diniatkan atau diperuntukkan di bawah s 4(1) Ordinan tersebut. Selanjutnya, peguam untuk pemohon menghujahkan bahawa perintah penahanan dibuat secara alternatif dan menteri telah gagal untuk menyatakan alasan mana yang didasarkannya dibawah s 4(1); dan (iii) eks 'ARH 2' bukanlah satu laporan tetapi hanyalah satu surat iringan kepada menteri. Ketidak-pendedahan laporan itu memudaratkan kes ini.

Diputuskan, menolak permohonan:

(1) Kesilapan berhubung dengan tarikh di dalam perenggan 3 afidavit tersebut bukanlah material dan tidak memprejudiskan pemohon kerana kesilapan tersebut paling teruk pun hanyalah sekadar kesilapan menaip dan terdapat keterangan yang mencukupi untuk membuktikan yang pemohon ditangkap pada 26 Mac 2003 (lihat perenggan 6 dan 8).

(2) Perkataan 'berunsur kekerasan' boleh juga memberi makna 'melibatkan keganasan' sebagaimana yang diperuntukkan di dalam seksyen tersebut. Oleh yang demikian, bantahan pemohon mengenai penggunaan perkataan 'berunsur kekerasan' dan bukannya 'kekerasan' tidak memberi kesan terhadap perintah penahanan tersebut. Alasan yang dinyatakan di dalam perintah penahanan jelas mengatakan bahawa perintah tersebut dibuat untuk tujuan menyekat keganasan atau menghalang jenayah yang melibatkan keganasan sebagaimana yang disokong oleh dakwaan-dakwaan fakta yang memberi butiran mengenai kegiatan jenayah pemohon yang

melibatkan keganasan. Oleh yang demikian, ianya salah untuk dikatakan bahawa menteri gagal untuk menyatakan bahagian mana s 4(1) perintah tersebut didasarkan (lihat perenggan 10).

(3) Keempat-empat dakwaan fakta terhadap pemohon sebagaimana yang terkandung di dalam perintah penahanan menunjukkan ciri-ciri keganasan yang menggambarkan unsur-unsur gangster, intimidasi dan penggunaan senjata. Alasan-alasan ini tertakluk di bawah bahagian kedua s 4(1) Ordinan tersebut, yang mana telah digunakan sewajarnya oleh menteri di dalam kes ini. Oleh yang demikian, tidak terdapat sebarang kecacatan pada perintah penahanan dan ianya tidak ditunjukkan bahawa menteri telah menggunakan bahagian s 4 yang silap (lihat perenggan 10 dan 12).

(4) Pengesahan oleh menteri mengenai penerimaan laporan sedemikian dari pegawai yang telah ditugaskan menghapuskan kesangsian yang diletakkan pada eksibit bertanda 'ARH 2' dan ketiadaan laporan sedemikian sebagaimana yang didakwa oleh pemohon. Maka berdasarkan fakta-fakta dan keadaan-keadaan ini, tidak terdapat asas bagi kesangsian pemohon mengenai kewujudan laporan yang dirujuk di dalam eksibit 'ARH 2' dan kesahihan perintah penahanan tersebut (lihat perenggan 15).]

Notes

For cases on preventive detention, see 5(1) *Malal's Digest* (4th Ed, 2004 Reissue) paras 1963–1981.

Cases referred to

Chia Khin Seng v Deputy Minister of Home Affairs [1957] 2 J Cr 279 (refd)
Liew Kim Swee v Menteri Dalam Negeri Malaysia & Anor [1991] 1 CLJ 53 (refd)
Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam and another application [1993] 3 MLJ 673 (refd)
Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors; *Re Application of Tan Boon Liat @ Allen* [1976] 2 MLJ 8 (refd)

Legislation referred to

Emergency (Public Order and Prevention Of Crime) Ordinance 1969 ss 3, (3)(c), 4(1)

Shanmugam Veeramalai (Shanmugam & Co) for the appellant.
Najib bin Zakaria (Senior Federal Counsel III) (Kementerian Keselamatan Dalam Negeri Malaysia) for the respondent.

Balia Yusof JC:

[1] The applicant was issued with an order of detention under s 4(1) of the Emergency (Public Order and Prevention Of Crime) Ordinance (the Ordinance) which reads:

4(1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that, that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that the person should be detained, the minister shall make an order (hereinafter referred to has a 'detention order' directing that person be detained for any period not exceeding two years.

[2] The detention order dated 24 May 2003 (the order) ordered the detention of the applicant for a period of the two years from 24 May 2003. For ease of reference I lay down the 'Alasan-Alasan Yang Atasnya Perintah Ini Dibuat' which reads as follows:

LAMPIRAN E

ORDINAN DARURAT (KETENTERAMAN AWAM DAN MENCEGAH JENAYAH) 5/69

NAMA ORANG TAHANAN: TAY LAY BENG
NO KAD PENGENALAN: 741015–01–6901

ALASAN-ALASAN YANG ATASNYA PERINTAH ITU DIBUAT:

Bahawa kamu adalah seorang ahli Gang 'Jin Ngee Tong' yang bertaraf (Ahli Biasa) serta menjalankan kegiatan Pinjaman Wang Tanpa Lesen (Tai Long). Kamu melibatkan diri secara langsung dalam melakukan jenayah yang berunsurkan kekerasan seperti mendatangkan cedera, ugutan jenayah bencana dan pemerasan dalam usaha untuk mendapatkan kembali wang pinjaman serta faedah ke atas pinjaman di kawasan persekitaran Bandaran Kluang, Johor. Antara kegiatan jenayah yang kamu telah terlibat adalah seperti berikut:

1 Bahawa kamu pada 20 January 2003 jam lebih kurang 2ptg di Kedai Chin Tong, Kahang, Kluang, Johor, kamu dengan bersenjatakan kayu talah menyerang mangsa di bahagian bahu dan belakang badan kerana keengganan mangsa menjelaskan bayaran wang pinjaman RM30,000 berserta faedah untuk pinjaman RM3,500 seminggu selama (26) minggu berturut-turut di mana kamu juga telah menyembur cat merah di dinding rumah mangsa dengan tulisan cina dengan kata-kata 'Hutang Wang Bayar Wang'. Kamu juga telah mengugut akan membunuh mangsa dan ahli keluarganya sekiranya gagal menjelaskan pinjaman tersebut. Mangsa mengalami kecederaan di seluruh bahagian badan.

2 Bahawa kamu pada 13 Mac 2003 jam lebih kurang 10mlm, bertempat di Jalan Parang, Kahang, Johor, kamu bersama rakan sejenayah dengan bersenjatakan kayu telah menyerang mangsa dengan membelasah mangsa dengan menggunakan tangan dan kaki kerana keengganan mangsa menjelaskan wang pinjaman sebanyak RM30,000 dan faedah ke atas pinjaman sebanyak RM3,500 setiap minggu. Kamu juga telah mengugut akan membunuh mangsa dan ahli keluarganya jika gagal menjelaskan bayaran tersebut. Akibat serangan tersebut mangsa mendapat kecederaan di bahagian belakang telinga sebelah kanan, luka bahagian kepala, mata sebelah kanan dan dada.

3 Bahawa kamu pada 28 Januari 2003 jam lebih kurang 6ptg, bertempat di rumah pangsa di Jalan Parang, Kahang, Johor, kamu dengan bersenjatakan sebilah pisau telah mengugut dan memaksa mangsa supaya menjelaskan bayaran wang pokok pinjaman sebanyak RM4,000 serta faedah bagi pinjaman tersebut berjumlah RM800 sebulan. Kamu juga telah mengugut akan membunuh seluruh ahli keluarga mangsa sekiranya mangsa enggan menjelaskan bayaran pinjaman tersebut.

4 Bahawa kamu pada bulan Januari 2003 waktu petang, bertempat di hadapan Hotel Annika Inn, Jalan Hj Manan, Kluang, Johor, kamu bersama rakan sejenayah dengan bersenjatakan kayu telah mengepung lalu menyerang mangsa kerana keengganan mangsa menjelaskan wang pokok pinjaman RM1,000 serta faedah pinjaman 20% atau sebanyak RM3,000 semenjak bulan Oktober 2002. Akibat serangan itu mangsa mengalami kecederaan di bahagian muka dan belakang badan.

Dengan Arahan

Timbalan Menteri Dalam Negeri

dtt

(AHMAD NAJME BIN MUHAMAD)
Penolong Setiausaha
Kementerian Dalam Negeri
Tarikh 24 Mei 2003
(KAMJ – 14843)

[3] The applicant was arrested on 26 March 2003 and his further detention under s 3 of the Ordinance has been adequately explained by the respondent through the affidavits in encls 5, 7, 12 and 15. Enclosure 7 is an affidavit affirmed by superintendent Wan Ahmad Najmuddin bin Mohd who reported the circumstances of the arrest of the applicant to a designated officer under s 3(3)(c) of the Ordinance. In para 3 of the said affidavit the officer stated the following:

3 Pada 10 Ogos 2001 jam 12.15ptg saya telah melaporkan hal keadaan penangkapan dan penahanan TAY LAY BENG (NO KPT: 741015–01–6901 (selepas ini dikenali sebagai 'pemohon') kepada Senior Asisten Komisioner Polis II Dato' Abd Rahim bin Hj Hanafi yang mana adalah seorang pegawai polis yang ditetapkan oleh Ketua Polis Negara mengikut s 3(3)(c) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 (selepas ini disebut Ordinan tersebut). Semasa menyediakan laporan tersebut, saya berpuas hati bahawa penyiasatan ke atas pemohon masih belum dapat disempurnakan. Salinan laporan hal keadaan penangkapan dan penahanan pemohon tersebut adalah dilampirkan dan ditandakan sebagai ekshibit 'WAN 1' yang disahkan benar oleh Cif Inspektor Kamalariffin bin Aman Shah seorang pegawai polis yang mempunyai di dalamnya jagaannya dokumen tersebut.

[4] Exhibit 'WAN 1' referred to in the said paragraph reads as follows:

SULIT

Nama: P/SAC II ABD RAHIM BIN HJ HANAFI, KPP D 7
Jabatan Siasatan Jenayah Rujukan: IGHQ/PF/36124
Polis Diraja Malaysia
Bukit Aman Tarikh: 23 April 2003
Kuala Lumpur

Laporan Mengenai Hal Keadaan Tangkapan Dan Tahanan Terhadap Seseorang Di Bawah Seksyen 3(3)(c) Ordinan No 5/69

NAMA: TAY LAY BENG
NO KP: 741015–01–6901 UMUR: 29 TAHUN JANTINA: LELAKI
ALAMAT (Mengikut KP): T 73 KG SELATAN 68700 KLUANG

Saya dengan segala hormatnya menarik perhatian yang berbahagia Tan Sri/Dato'/Tuan kepada hal keadaan tangkapan dan tahanan penama tersebut di atas. Laporan ini merupakan suatu keperluan sebagaimana yang dinyatakan di bawah Seksyen 3(3)(c) Ordinan No 5/69.

2 Penama telah ditangkap dan ditahan di bawah Seksyen 3(1) Ordinan No 5/69 pada 26 Mac 2003 jam 1630 HRS di JALAN SEKOLAH. KLUANG untuk siasatan tentang kegiatan jenayahnya di bawah Ordinan No 5/69. Penahanannya di bawah Seksyen 3(3)(a) dan 3(3) (b) Ordinan No 5/69 ini telah dibenarkan supaya siasatan seterusnya dapat dilakukan. Tarikh lanjutan tarikh di bawah Seksyen 3(3)(b) adalah 24 April 2003.

3 Oleh kerana siasatan terhadap penama tidak dapat disempurnakan dalam 30 hari pertama ini bagi tujuan siasatan itu, maka adalah perlu bagi beliau ditahan selama 30 hari lagi, mulai 25 April 2003 bagi tujuan Seksyen 3(3)(c) di bawah Ordinan No 5/69 untuk siasatan selanjutnya.

Sekian, terima kasih

dtt

WAN AHMAD NAJMUDDIN BIN MOHD
JABATAN SIASATAN JENAYAH Tarikh: 23 April 2003 jam 9.15pagi

Nota:

1) Laporan ini mestilah ditandatangani oleh seorang Pegawai Polis yang berpangkat, Timbalan Penguasa Polis (TPP) atau lebih tinggi sahaja.

2) Menandatangani bagi pihak sesiapa adalah tidak dibenarkan.

[5] Counsel for the applicant launched an attack on this affidavit by contending that what is stated by the deponent in para 3 of the said affidavit is not true wherein it was stated he referred the circumstances of the arrest to the designated officer on 10 August 2001 at 12.15pm. It was submitted that

this fact is not true as the applicant was only arrested on 26 March 2003 at 4.30pm. The applicant was actually not in police custody on 10 August 2001 as averred in the said para 3. However exh 'WAN 1' which is referred to in the same paragraph states that the applicant was arrested on 26 March 2003 and that the reporting of the circumstances of the arrest under s 3(3)(c) of the Ordinance was made on 23 April 2003 at 9.15am. Counsel for the applicant submits that there are two versions of the circumstances as disclosed by the officer which shows the cavalier attitude of the officer in so affirming the said affidavit. The court is urged to give the version more favorable to the applicant and that the defective affidavit has failed to show the exact date on which the reporting of the circumstances was done.

[6] In my considered view, having perused the facts stated in para 3 of the affidavit in encl 7 and exh 'WAN 1' accompanying it and as against the whole background of the case and all the other facts which are gathered from the affidavits filed in this application, I hold that the mistake as to the date in para 3 of encl 7 is not material and is not prejudicial to the applicant. I accept it as an established fact that the applicant was arrested on 26 March 2003 and clearly the date 10 August 2001 in the said para 3 is a typographical error at the most. Exhibit 'WAN 1' reinforces that finding. Besides, encl 15 which is an affidavit by the designated officer under s 3(3)(c) of the Ordinance further fortify my finding wherein it was stated by the said designated officer in para 4 as follows:

> 4 Pada 23 April 2003, jam 9.15pg saya telah menerima laporan hal keadaan penangkapan dan penahanan terhadap TAY LAY BENG (NO KPT: 741015–01–6901) (selepas ini disebut sebagai pemohon) daripada Superintendan Polis Wan Ahmad Najmuddin bin Mohd telah mengkaji dan meneliti laporan tersebut saya mendapati bahawa penahanan terhadap pemohon perlu dilanjutkan selama 30 hari bertujuan untuk meneruskan siasatan terhadap pemohon. Saya berpuas hati bahawa ada alasan-alasan yang mematutkan pemohon ditahan di bawah Seksyen 4(1) Ordinan tersebut.

[7] From the above set of facts it is beyond doubt that the applicant was arrested on 26 March 2003 at 4.30pm and that the report of the circumstances of his arrest was made to the designated officer under s 3(3)(c) of the Ordinance on 23 April 2003 and in accordance with the provisions of the law. In *Liew Kim Swee v Menteri Dalam Negeri Malaysia & Anor* [1991] 1 CLJ 53 Dato' Mohtar Abdullah J (as he then was) has stated following at p 54:

> Keterangan dalam kes-kes *habeas corpus* adalah dengan afidavit-afidavit, dan jika kandungan afidavit-afidavit tidak mencukupi untuk membuktikan pematuhan kepada kehendak prosedur yang ditetapkan oleh undang-undang, maka walaupun pihak berkuasa mungkin mempunyai alasan yang baik dan munasabah untuk menahan seseorang yang memudaratkan keselamatan negara, mahkamah akan terpaksa memerintahkan pembebasan orang tahanan itu. Walau bagaimanapun di dalam kes ini, saya dapati meskipun beberapa afidavit bagi pihak responden terlalu ringkas, tetapi pada keseluruhannya keterangan yang dikemukakan adalah mencukupi untuk mahkamah memutuskan isu-isu yang telah ditimbulkan.

[8] I am satisfied that having considered all the evidence before me, the applicant's objection to the misstatement on the date 10 August 2001 is a typographical error in the affidavit encl 7, and there is ample evidence to prove the applicant was arrested on 26 March 2003.

[9] The second objection by the applicant is premised on the ground of detention and the allegations of facts on which the detention order was made. It is stated in the 'Alasan-Alasan Yang Asasnya Perintah Ini Dibuat' that the applicant 'adalah seorang ahli Gang 'Jin Ngee Tong' yang telah melibatkan diri dalam jenayah yang *berunsur kekerasan.'* (Emphasis added.) Again, in the 'Penyataan-Penyataan Fakta Yang Asasnya Perintah ini Diasaskan' it was stated that 'Bahawa kamu adalah seorang ahli Gang 'Jin Ngee Tong' yang bertaraf (Ahli Biasa) serta menjalankan kegiatan Pinjaman Wang Tanpa Lesen (Tai Tong). Kamu melibatkan diri secara langsung dalam melakukan jenayah yang *berunsurkan kekerasan* seperti mendatangkan cedera, ugutan jenayah bencana dan pemerasan dalam usaha untuk mendapatkan kembali wang pinjaman serta faedah ke atas pinjaman di kawasan persekitaran Bandaran Kluang, Johor.' (Emphasis added.) En V Shanmugam, counsel for the applicant submits that the words 'berunsur kekerasan' does not comply with the provisions of s 4(1) of the Ordinance. Translated into the English language the word 'berunsurkan kekerasan' means 'resembling violence'. Thus, it was submitted that it is not what is intended or provided for in s 4(1) of the Ordinance. It is further submitted by counsel that the detention order is in the alternative and the minister has failed to state which of the grounds in s 4(1) he is relying on.

[10] From the grounds of detention attached to the order it seems clear that the applicant was detained on the second limb of s 4(1) of the Ordinance. To me the words 'berunsur kekerasan' can also mean exactly what the English equivalent of 'involving violence' as stipulated in that section. The applicant's objection to the use of the words 'berunsur kekerasan' instead of just 'kekerasan' does not vitiate the detention order. The ground stated in the detention order clearly say that the order was made for the purpose of the suppression of violence or the prevention of crimes involving violence as supported in the allegations of facts detailing the applicant's criminal activities involving violence. In this respect it is therefore erroneous to suggest that the Honorable Minister has failed to specify on which limb of s 4(1) the order was made. The learned counsel's argument that the order is worded in the alternative is therefore untrue. Reliance was sought to be placed on the case of *Menteri Hal Ehwal Dalam Negeri & Anor v Lee Gee Lam and another application* [1993] 3 MLJ 673 where the Supreme Court in dismissing the appeal held that on the face of it, the order was vague as to whether the Deputy Minister had actually applied his mind to the particular circumstances of the respondent's case or whether he had exercised his power of detention mechanically. The order of detention in that case was clearly worded in the alternative to the extent that it has left some

doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in granting the order. Such is not the case before me now, as all the four allegations of facts against the applicant as contained in the detention order bore the hallmark of violence reflecting gangsterism, intimidation and use of weapons. These grounds fall squarely under the second limb of s 4(1) of the Ordinance which was appropriately invoked by the Honorable Minister in this case. In *Re Application Of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83 at p 84 Abdoolcader J (as he then was) opined:

> … An order of detention based on irrelevant grounds is invalid and if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of the relevant legislation under which the detention is ordered and in that sense are foreign thereto, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed (Rameshwar Shaw vs District Magistrate, Burdwan & Anor).

[11] It is trite that s 4(1) of the Ordinance contains two separate and distinct limbs and the Honorable Minister must be seen to be exercising his powers by invoking the correct limb in issuing the said detention order. A failure to do so would lead to the conclusion that he had acted mechanically and arbitrarily (*Chia Khin Seng v Deputy Minister of Home Affairs* [1957] 2 J Cr 279).

[12] On the facts and circumstances of this case, and having considered the evidence before me, I am of the considered view that there is no defect in the detention order and that it is not shown that the Minister has invoked the wrong limb of s 4 (1) of the Ordinance. Accordingly, I hold that the applicant's objection on this ground must also fail.

[13] I shall now turn to the third ground advanced by the applicant in support of his application for a writ of habeas corpus. Enclosure 15 is an affidavit by Senior Assistant Commissioner of Police II Dato Abd Rahim b Hj Hanafi, a designated officer under s 3(3)(c) of the Ordinance. In para 4 of the said encl 15, this officer averred that on 23 April 2003 at 9.15am he received a report of the circumstances of the arrest of the applicant from one Superintendent Wan Ahmad Najmuddin bin Mohd. and in para 5 of the same he further stated that he reported the circumstances of the arrest and detention of the applicant to the Minister with a copy of the report exh as 'ARH 2' in his affidavit. Counsel for the applicant contended that exh u ARH 2' is not a report but a mere covering letter to the Honorable Minister. The non-disclosure of the report by this officer is in his submission fatal to the case because there is indeed no such report.

[14] As alluded to in the earlier part of my judgment and guided by the approach adopted by the court in the case of *Liew Kim Swee v Menteri Dalam Negeri Malaysia & Anor*, the affidavit evidence by which this application is determined must be considered as a whole and in its totality. In so doing it is

pertinent to consider encl 4, the affidavit of the Honorable Minister who at paras 5 and 6 states the following:

> 5 Pada 24 April 2003 saya telah menerima laporan hal keadaan penangkapan dan penahanan pemohon daripada pegawai yang ditetapkan di bawah Seksyen 3(3)(c) Ordinan tersebut iaitu Pemangku Senior Assistan Komissioner Polis II ABD RAHIM BIN HJ HANAFI.
>
> 6 Daripada laporan lengkap penyiasatan yang berkaitan dengan aktiviti pemohon yang telah saya terima mengenai tangkapan dan penahanan pemohon, saya telah berpuas hati bahawa pemohon adalah seorang ahli Gang 'Jin Ngee Long yang telah melibatkan diri dalam jenayah yang berunsurkan kekerasan dan adalah perlu pemohon ditahan bagi tujuan menghapuskan kekerasan dan mencegah jenayah melibatkan kekerasan. Seterusnya saya telah membuat satu Perintah Tahanan dibawah Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam Dan Mencegah Jenayah), 1969 bertarikh 24 Mei 2003 yang mengarahkan supaya pemohon ditahan bagi tempoh 2 tahun mulai dari 24 Mei 2003 (selepas ini dirujuk sebagai Perintah Tahanan tersebut'. Satu salinan Perintah Tahanan tersebut adalah seperti mana yang dilampirkan dan ditandakan sebagai ekshibit 'ZAZ-1' di dalam afidavit pemohon.

[15] From the above said averments by the Honorable Minister, it is clear that a report as to the circumstances of arrest and detention of the applicant was submitted to him on 24 April 2003 by the designated officer following which and after considering the report, a detention order was made on 24May 2003 directing the applicant to be detained for a period of two years from that date. This confirmation by the Honorable Minister of the receipt of such a report from the designated officer sealed the doubts that were cast on the exhibit marked 'ARH 2' and the absence of such a report as contended by the applicant. Having satisfied himself, based on the report relating to the activities of the applicant, a detention order under s 4(1) of the Ordinance was issued. Upon these facts and circumstances, I find no basis in the applicant's doubts as to the existence of a report referred to in exhibit 'ARH 2' and hence the propriety of the detention order.

[16] In the circumstances, the application for a writ of habeas corpus is hereby refused.

Application dismissed.

Reported by Izzaty Izzuddin